

ORDINANCE NO. 10-23

**TOWN OF MERRILLVILLE TREE ORDINANCE AND LANDSCAPE PLAN
REQUIREMENTS**



Purpose

The intent of this document is to promote the public health, safety and welfare by establishing minimum requirements for the design, installation, and maintenance of woody vegetation and landscaping. These regulations are intended to achieve a number of functional and environment objectives to sustain Town-wide green infrastructure such as:

- Conserve existing woody vegetation.
- Require standards for landscape planning.
- Avoid conflicts with overhead and underground utilities.
- Protect trees from unnecessary damage during construction.
- Require sufficient mitigation of tree loss.
- Require proper tree planting, pruning and other related maintenance.
- Allow for early detection of pest and disease.
- Minimize soil compaction and control grade changes to protect root systems.
- Promote treatment of storm water runoff through vegetative buffers and trees.

Establishment of an Environmental Resource Committee

- There shall be a committee that serves solely in an advisory capacity to the Town of Merrillville that shall be known as the Environmental Resource Committee composed of five (5) members who reside or work within Merrillville. Two (2) members are appointed by the Town Council, and three (3) members are appointed by the Town Manager/Administrator. The term of office for the members shall be one (1) year. Current members will be eligible to serve successive terms. The Town Council has the authority to remove any member at any time for any reason deemed sufficient. Vacancies shall be filled by appointment for the remainder of the term.

Environmental Committee Organization

- The Environmental Committee shall elect from its membership a President and Vice-President whose respective terms shall be for one (1) year.
- The Environmental Committee shall have regularly scheduled meetings and may adopt written rules and procedures as necessary to carry out its stated duties and responsibilities.
- A majority of the members shall constitute a quorum for the transaction of business.
- The Town of Merrillville Public Works Director shall serve as the administrator for the Environmental Committee.

Environmental Committee Duties and Responsibilities

- The Environmental Committee shall serve in an advisory capacity to the Town of Merrillville and may provide guidance in the following areas:
 - Assist with technical standards concerning tree/shrub care, preservation, selection, installation, pest abatement, maintenance and removal located on Town-owned property.
 - Making recommendations to the Town of Merrillville Planning Commission on submitted landscaping plans prior to approval.
 - Participate in annual Arbor Day event and ensure reading of proclamation.

- Ensure minimum standards and annual submittal to maintain Tree City USA status.
- Assist the Town with public tree inventories as needed.
- Participate in volunteer tree planting and maintenance events as requested by the Town of Merrillville Parks Department.
- Apply for tree-related grants.
- Provide comments on subsequent revisions to this ordinance as needed.
- Meet on a monthly basis and maintain meeting minutes for record.
- Make recommendations to the Town of Merrillville Public Works Department regarding specific maintenance of trees on Town-owned property.
- Elect a President and Vice-President annually and keep written records of its proceedings, all in accordance with Indiana law.
- All members shall serve without compensation.

Prohibited Tree Species List

- The Environmental Committee maintains and updates a list of trees that are deemed unsuitable for urban areas and shall not be planted on select properties located within the Merrillville corporate limits. The list may be itemized according to the following categories: Parkways, Overhead Utilities, Retention Ponds, Parking Lots, Parkland and Commercial/Industrial Landscape. The Town of Merrillville Public Works Department has the authority to remove any prohibited tree planted on public property after the passing of this ordinance.

Landscape Plan Specifications

- A landscaping plan must be approved by the Town of Merrillville, Planning Commission prior to issuance of a Building Permit for all new development or re-development projects located in the Town of Merrillville following the effective date of this Ordinance.
- **Landscaping plans must follow the principals within the Merrillville Landscape Standards Manual as well as all sections in this ordinance.**
- Plans must comply with more stringent regulations found in the following Town of Merrillville Municipal Codes:
 - Sec. 21-106. C-5 – Use and Development Regulations.
 - Sec. 21-107. C/I-S commercial/industrial special district.
 - Sec. 21-119. M-2 – Use and development regulations.
 - Sec. 21-130. PUD regulations - Residential
- The Town of Merrillville may require applicants to post a cash escrow in an amount to be determined by the Planning Commission. The escrow shall only apply to that portion of the site development plan that is being developed under the permit. The bond will be returned to the applicant upon successful completion of the landscaping plan.
- The Landscape Plan shall demonstrate that all requirements of this section are met and shall include the following information:
 - Provide list of species, size, location of trees/shrubs to be planted.
 - Identify trees and other existing landscape elements to be preserved and provide details of protection measures.
 - Delineate the location of tree protection fence and limits of grading at the perimeter of areas that are to be preserved.
 - Provide standard tree planting detail drawing and specifications.
 - Show locations of proposed grass areas and other types of ground covers with respect to buildings, parking areas, driveways, signs, water surfaces, paved patios, terraces, sidewalks and similar site features.
 - Show locations of all known utilities with respect to preserved and proposed tree/shrub locations.
 - Provide seeding mix details, application rates and methods.

- Provide minimum one (1) year warranty on viability for all woody plant materials after installation.
- Show location(s) and typical cross-section of landscape berm(s).
- Provide a Statement of Compliance or request for waiver through the Town of Merrillville Planning Commission.
- Provide a typical lot landscaping detail for residential developments

Tree Conservation During Land Development

- Town of Merrillville Environmental Committee Members or designee(s) have the opportunity to enter private property, after providing written notice to property owner(s), for the purpose of conducting an on-site early coordination meeting to identify natural features for conservation, which may result in an inventory of select trees/shrubs with respect to location, size, species and condition. This shall occur no later than ten (10) business days after filing a petition.
- **All trees identified by the property owner for protection on an approved plan shall implement the following minimum preventative measures:**
 - Prior to the commencement of any construction activities, barrier fencing shall be installed around the perimeter of protected tree(s) identified in approved landscaping plans, extending a minimum of 1' x DBH radial distance from the nearest tree to define a Protected Root Zone (PRZ).
 - No construction equipment, soil stockpiles, materials, byproducts including, but not limited to, paint, plaster, or chemical solutions shall be allowed within an established PRZ.
 - Signage shall be placed on or near the barrier fencing identifying the area as a "Tree Preservation Area".
 - "Natural" or pre-construction grade shall be maintained in the PRZ when feasible.
 - The PRZ must be irrigated sufficiently with clean potable water such that it supplements normal rainfall (1.5"/week) during times of drought.
 - The PRZ must not be subjected to flooding incidental to the construction work.
 - Any required trenching shall be routed in such a manner as to minimize root damage. Ground shall be excavated utilizing hand tools or air spade. Tunneling shall be considered as an alternative when practical.
 - In areas where root cutting may be unavoidable, cuts must be clean and made at right angles to the roots.
 - Any unavoidable movement of equipment through a PRZ shall utilize plywood or 7-10" thick layer of mulch under load to minimize soil compaction.
 - Any desirable species 4" diameter at breast height (DBH) or less may be considered for transplanting utilizing the American National Standards Institute (ANSI) A300 transplant standards or equivalent.

Planting

- No person(s) shall install a tree identified on the prohibited tree species list on select properties located within the Town corporate limits.
- No trees shall be planted within a public right-of-way or easement that may, at maturity, interfere with overhead utilities. Refer to NIPSCO overhead line clearance standards for distances and setbacks.
- Locates must be performed through Indiana Underground prior to soil disturbance for tree/shrub planting.
- No trees or shrubs shall be planted within a drainage easement unless otherwise accepted in writing by the Town's Storm Water Management Board.

- All trees planted on public-owned property or as part of a landscaping plan shall be mulched with 2"- 4" thick flat layer extending 3' - 5' from the basal flair maintained for at least the first three (3) growing seasons. Mulch shall not be in contact with the main stem(s).
- All trees planted on public-owned property or as part of a landscaping plan shall be planted at ground level such that a basal flair is above ground.
- All trees planted on public-owned property or as part of a landscaping plan shall not be staked for longer than one (1) year after installation.
- No tree shall be planted such that it interferes with signage or traffic visibility.

Pruning

- **It shall be unlawful as a normal practice for any persons, firm or Town department to top any tree on public-owned property.**
- Pruning of all trees on public-owned property should be in accordance with ISA's Tree Pruning Guidelines or most recent ANSI A300 Pruning Standards, and ANSI Z133.1 Safety Standards.
- Pruning should be limited to the removal of dead wood and the correction of potentially hazardous conditions, and structural enhancements.

Tree Removal, Replacement, and Maintenance

- No person(s) other than those under the direction of the Town of Merrillville Public Works Director, Parks Director or their designee(s) or NIPSCO contracted line clearance Certified Arborists shall remove, install or perform maintenance on tree(s) located on public-owned property.
- Trees removed on public-owned property shall require replacement installed on public-owned property at a location determined by Merrillville Public Works Director, Parks Director or their designee(s).
- Private property owner(s) shall be responsible for disposal of woody debris originating from their parcel(s) when removal is performed by any hired entity (landscaping company, tree service, neighbor, etc...).
- In the process of public tree removal, all stumps shall be removed at least six (6) inches below the ground.
- Any person(s) applying chemicals for plant care or pest and disease abatement on public-owned property must be an Indiana Certified Pesticide Applicator through the Office of the Indiana State Chemist.
- No person(s) shall excavate any ditches, tunnels, trenches within ten (10) feet from any public tree without written permission from the Town of Merrillville Public Works Director.
- Any person may request that a public tree be considered for removal, provided that public safety is the basis for concern. The Town of Merrillville Public Works Director or his/her designee(s) must assess and document each claim within a reasonable period of time.
- The Town of Merrillville Public Works Director or his/her designee(s) has the authority to issue a stop work order for any maintenance or construction activity which is impacting a public tree.
- Any utility company (NIPSCO) or contracted company performing routine (non-emergency) overhead utility line clearance work within the corporate limits of Merrillville must have written permission from the Town of Merrillville Public Works Director prior to pruning or removal of any tree.

Inspections and Monitoring

- The Town of Merrillville Public Works, Planning staff or their designee(s) has the authority to enter construction sites for periodic inspections to ensure compliance with an approved landscaping plan.
- The Town of Merrillville Public Works, Planning staff or their designee(s) has the authority to enter private property after providing written notification to property owner to conduct inspections of trees which maybe impacting public utilities and perform maintenance as needed.
- The Town of Merrillville Public Works, Planning staff or their designee(s) has the authority to enter private property after providing written notification to property owner to conduct inspections of trees/shrubs for pest and disease concerns that may impact public trees and perform corrective actions as needed.

Vandalism

- No person(s) shall intentionally damage, cut, carve, transplant, spray, nail, attach signage or remove any tree or shrub or other vegetation on public-owned property. Those found guilty of such actions may be subject to enforcement.

Enforcement

- Any person(s) that conducts mass grading operations resulting in the loss of trees without an approved landscaping plan as required by this ordinance will be subject to fines of **no less than \$200 and a maximum of \$1000** for each separate offense. Each day during which any violation of the provisions of this ordinance shall occur or continue may be deemed a separate offense. In addition to fines, a violation may also result in issuance of a **stop work order** on the construction project. The Town of Merrillville Planning Director, Public Works Director or their designee(s) has the authority to enforce the requirements of this ordinance.
- Any person(s) whose actions result in the damage or death of a tree located on public-owned property, will be subject to fines of **no less than \$200 and a maximum of \$1000** for each separate offense. Each day during which any violation of the provisions of this ordinance shall occur or continue may be deemed a separate offense. In addition to fines, violation may also include the cost of the repair, replacement and/or labor for corrective action(s). The Town of Merrillville Planning Director, Public Works Director or their designee(s) has the authority to enforce the requirements of this ordinance.

Exemptions

- In emergencies when woody vegetation has been severely damaged by storms or other causes, the Town of Merrillville Planning Director, Public Works Director, Parks Director or their designee(s) may waive the requirements of this ordinance to prioritize public safety.

Appeals

- Any person to whom any provision of this Ordinance has been applied may appeal in writing, no later than thirty (30) days after the action or decision being appealed from, to the Town of Merrillville Board of Works the action or decision whereby any such provision was so applied. Such appeal shall identify the matter being appealed, and the basis for the appeal. The Town of Merrillville Plan Commission shall consider the appeal and make a decision whereby it affirms, rejects or modifies

the action being appealed. In considering any such appeal, the Town of Merrillville Board of Works may grant a variance from the terms of this Ordinance to provide relief, in whole or in part, from the action being appealed.

Definitions

Basal Flair: means the tree trunk where it emerges from the root system and flairs out to create the base of the tree.

Certified Arborist: means an individual who has demonstrated knowledge and competency through obtainment of the current International Society of Arboriculture arborist certification.

Public-owned Property: all property owned by the Town of Merrillville or any agency or department thereof and all property included in the Public Way as defined by the Merrillville Zoning Ordinance.

Designee: an individual (contracted, hired or appointed) that is authorized by the Town to perform specific tasks.

Diameter Breast Height (DBH): the diameter of a tree in inches 4 ½ feet above the ground.

Parkway: a public-owned strip of land typically located between a sidewalk and a roadway often planted with grass and shade trees.

Person: any individual, firm, partnership, association, corporation, company or organization which is not authorized by the Town.

Protected Root Zone (PRZ): means the area within a circle with a radius equal to the greatest distance from the trunk to any overhanging foliage in the tree canopy.

Topping: the cutting back of major limbs to stubs within the tree's crown to such a degree as to disfigure the tree canopy.

Tree: a woody, perennial plant, ordinarily with one main stem or trunk, which develops many branches and which ordinarily, grows to a height of ten (10) feet or more.

WITNESS WHEREOF, the Town of Merrillville, Indiana has caused these documents to be signed in its name and behalf by the President of its Town Council, President of its Planning Commission and attest by its Clerk-Treasurer, and to evidence its acceptance of these documents hereby created.

TOWN OF MERRILLVILLE, INDIANA

By: _____ Date: _____
Richard Hardaway, President, Town Council

By: _____ Date: _____
Shawn Pettit, President, Planning Commission

Attest:

_____ Date: _____
Eugene M. Guernsey, Clerk Treasurer